

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Increase the Availability of Mental Health Services

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §101-D, sub-§5, ¶A, as amended by PL 2013, c. 434, §1 and affected by §15, is further amended to read:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. An appropriate program may be in a mental health unit of a correctional facility if, based upon a consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and 180 days, the State Forensic Service or other appropriate office of the Department of Health and Human Services shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the State Forensic Service's report or the report of another appropriate office of the Department of Health and Human Services to the court states that the defendant is either now competent or not restorable, the court shall within 30 days hold a hearing. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. An appropriate program may

be in a mental health unit of a correctional facility if, based upon a consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order. As used in this paragraph, "panel" means a panel consisting of at least 3 psychiatrists or psychologists, in any combination, each of whom is not currently involved in the person's diagnosis and treatment; or

Sec. 2. 15 MRSA §103, as amended by PL 2013, c. 424, Pt. B, §3, is further amended to read:

§ 103. Commitment following acceptance of negotiated insanity plea or following verdict or finding of insanity

When a court accepts a negotiated plea of not criminally responsible by reason of insanity or when a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, the judgment must so state. In those cases the court shall order the person committed to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of persons with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for care and treatment. An appropriate institution may be a mental health unit of a correctional facility if, based upon a consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's

designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court.

When a person who has been evaluated on behalf of a court by the State Forensic Service is committed into the custody of the Commissioner of Health and Human Services pursuant to this section, the court shall order that the State Forensic Service share any information it has collected or generated with respect to the person with the institution or residential program in which the person is placed.

As used in this section, "not criminally responsible by reason of insanity" has the same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or verdict in this State under former section 102; under a former version of Title 17-A, section 39; under former Title 17-A, section 58; or under former ~~section 17-B~~, chapter 149, section 17-B of the Revised Statutes of 1954. As used in this section, "panel" means a panel consisting of at least 3 psychiatrists or psychologists, in any combination, each of whom is not currently involved in the person's diagnosis and treatment.

Sec. 3. 34-A MRSA §3069-A, sub-§1, as enacted by PL 2013, c. 434, §5, is amended to read:

1. Eligible inmates. The commissioner may transfer from a jail to a correctional facility an adult inmate who the chief administrative officer of the Riverview Psychiatric Center confirms is eligible for admission to a state mental health institute under Title 34-B, section 3863, but for whom no suitable bed is available, for the purpose of providing to the inmate mental health services in a mental health unit of a correctional facility that provides intensive mental health care and treatment. ~~The commissioner may not transfer pursuant to this section a person who has been found not criminally responsible by reason of insanity.~~ The commissioner may return an inmate transferred pursuant to this subsection back to the sending facility.

For purposes of this subsection, "intensive mental health care and treatment" has the same meaning as in section 3049, subsection 1.

Sec. 4. 34-A MRSA §3069-B, sub-§1, as enacted by PL 2013, c. 434, §6, is amended to read:

1. Acceptance of placement. The commissioner may accept the placement of an adult defendant in a mental health unit of a correctional facility that provides intensive mental health care and treatment for observation, care and treatment whom a court commits to the custody of the Commissioner of Health and Human Services under Title 15, section 101-D, ~~subsection 4~~ or 103 if, in addition to the findings required under Title 15, section 101-D, ~~subsection 4~~ or the requirements of section 103, as may be applicable, the court, after hearing, finds by clear and convincing evidence that:

- A. The defendant is a person with mental illness and, as a result of the defendant's mental illness, the defendant poses a likelihood of serious harm to others;
- B. There is not sufficient security at a state mental health institute to address the likelihood of serious harm; and
- C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility.

~~The commissioner may not accept the placement of a person who has been found not criminally responsible by reason of insanity.~~

For purposes of this subsection, "intensive mental health care and treatment" has the same meaning as in section 3049, subsection 1.

SUMMARY

This bill provides that, under certain circumstances, the Commissioner of Health and Human Services or the commissioner's designee may determine that a mental health unit at a correctional facility is an appropriate institution or program for the placement of persons who have been determined to be incompetent to stand trial or not criminally responsible by reason of insanity.